

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2378 – SB 2240

January 30, 2012

SUMMARY OF AMENDMENTS (011732, 012013): Defines “obligation” and “material” and redefines “claim” as they relate to the Tennessee Medicaid False Claims Act. Expands violations of the Medicaid False Claims Act to include knowingly presenting a fraudulent claim, knowingly making or using a false or fraudulent record, knowingly making a false record or statement material to an obligation, or knowingly concealing, avoiding, or decreasing an obligation to pay or transmit money to the state. Authorizes the adjustment of a civil penalty, between \$5,000 and \$25,000, by the Federal Civil Penalties Inflation Adjustment Act of 1990. Requires, unless opposed by the state, the court to dismiss an action or claim if the same allegations or transactions as alleged in the action or claim are publicly disclosed in a criminal, civil, or administrative hearing in which the state is a party. Increases, from \$10,000 to \$25,000, the amount of actual damages that the Bureau of TennCare may seek through an administrative proceeding. Corrects a typographical error in the effective date section of the proposed bill.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – Not Significant

Other Fiscal Impact – Prevents the recurring loss of approximately \$4,766,700 in state revenue from recovered false claims.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Unchanged from the original fiscal note.

Assumptions applied to amendments:

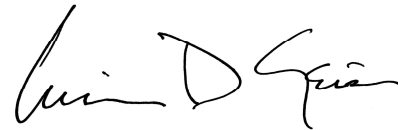
- According to the Bureau of TennCare, the proposed changes update and align state law with federal regulations.
- Currently, the state must return the federal portion of any funds collected through false claims. The state may keep an additional 10 percent of the funds if the state collection efforts meet federal requirements. The state is retaining the additional 10 percent.
- The amount collected varies each year. Over the past three years, TennCare has recovered approximately \$143,000,000 in false claims from providers. This averages \$47,666,700 per year in recovery.

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- The FY12-13 federal match rate is 66.188 percent and the state share is 33.812 percent. If the state were to retain the enhanced rate, the state's share would be 43.812 percent.
- The state's enhanced share of the \$47,666,700 average would be \$20,883,735 (\$47,666,700 x 43.812%).
- If the state did not meet the federal regulations and were not able to retain the enhanced share, the state's share would be \$16,117,065 (\$47,666,700 x 33.812%).
- The difference in the enhanced share is \$4,766,670 (\$20,883,735 - \$16,117,065).
- According to the Tennessee Bureau of Investigation (TBI), the provisions of the bill will not have a significant impact on the number of false claims cases. Any costs incurred by the Office of Attorney General and the TBI will not be significant and can be accommodated within existing resources without an increased appropriation or reduced reversion.
- Currently, the Attorney General and TBI can seek to recover between \$10,000 and \$25,000 and TennCare can seek to recover amounts up to \$10,000 through an administrative hearing.
- By increasing the amount that TennCare can seek to recover through an administrative hearing, some of the workload will shift from the Attorney General and TBI to TennCare. Any increase in state expenditures incurred by TennCare for this additional work will be offset by the decrease in state expenditures to the Attorney General and TBI. All work will be done by current staff and there will not be a significant net impact.
- Since the amount of damages that the state may recover will not change, the total amount of funds recovered will not increase; therefore, any change in revenue will not be significant.
- Changing the effective date of the bill to "upon becoming law" from "upon passage" will not change the estimated fiscal impact of the bill's provisions.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/kml